ITEM 1008-D

X 96-2:H. Rp. 1482

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1482

AUTHORIZING THE CONVEYANCE OF CERTAIN FEDERAL LANDS AND THE ISSUANCE OF CERTAIN PATENTS, AND FOR OTHER PURPOSES

DECEMBER 1, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

COMPLETED ORIGINAL

REPORT

[To accompany H.R. 7260]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 7260) to authorize the conveyance of certain Federal lands and the issuance of certain patents, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, through page 3, line 10, strike all of sections 1 and 2.

Page 3, line 11, strike "Sec. 3. The" and insert "That the".

Amend the title so as to read:

> To authorize the Secretary of the Interior to issue patents for numbered school sections previously granted to certain States, and for other purposes

PURPOSE

H.R. 7260, as amended, directs the Secretary of the Interior, upon appropriate application by a State, to issue patents to such State for numbered school sections which were previously granted pursuant to acts of Congress.

BACKGROUND AND NEED

H.R. 7260, as recommended, is based upon a request of the Administration for legislation authorizing the Secretary of the Interior to issue "confirmatory" patents to the States for various grants of school sections which were conveyed in prior years.

As amended, H.R. 7260 would direct the Secretary of the Interior to issue patents to the States for numbered school sections previously granted to the States by several acts of Congress. It would basically reenact the Act of June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871(a)), which directed the Secretary of the Interior to issue patents to States for school lands which had been conveyed to the States. Patents issued under the 1934 Act were to show the date when title vested and the extent to which the lands were subject to prior conditions or rights. Those patents did not actually grant title, since title had already vested in the State; they merely provided evidence of title. Many States have found, however, that under their laws it is necessary for them to have patents describing the date on which their title to the land vested.

Section 705(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) (FLPMA) repealed a number of laws relating to the administration of public lands, including the Act of June 21, 1934. Although section 208 of FLPMA authorizes the Secretary of the Interior to issue patents or other documents of conveyance, that Act does not specifically authorize the Secretary to issue "confirmatory" patents such as those provided for in the repealed 1934 Act.

Section 208 of FLPMA was derived from section 211 of S. 507, 94th Congress, 1st Session, which provided: "Consistent with his authority to dispose of national resource lands, the Secretary is authorized to issue deeds, patents, and other indicia of title . . . ". This provision, if enacted, would arguably have retained the authority to issue confirmatory patents which had been granted in the 1934 Act. Section 208 of FLPMA, however, does not allow such construction, since it authorizes the Secretary to issue patents only "after any disposal authorized by this Act." The numbered school section grants to States are not "disposals authorized by" FLPMA.

Although the Act of June 21, 1934, was repealed without enactment of comparable authority, another statute, the Act of January 25, 1927, as amended (43 U.S.C. 870(d)(4)), still required that the Secretary "shall, upon application by a State, issue patents to the State" for mineral lands in place granted to a State for support of schools. The Committee believes that it would be proper for any such patent for mineral lands to include the information concerning title and prior conditions and rights required by the repealed 1934 Act. However, where lands in place granted to the State are found to be nonmineral in character, there is apparently now no authority to issue, as evidence of title, a document in the form of a "patent."

While the Committee knows of nothing to prevent issuance of a document to a State, in the form of a letter or otherwise, which is not designated a "patent," but which provides the information necessary to determine the data on which title vested in the State, this apparently is not sufficient for the States' needs. The Committee has been informed that the Bureau of Land Management has on file numerous applications under the 1934 Act and has received several indications that patents, rather than letters or other documents, are needed. Further, the Western States Land Commissioners Association has adopted resolutions in support of reenactment of the 1934 Act. Without attempting to decide whether the issuance of a patent is the only appropriate evidence of the previous vesting of title in the

State in these cases, the Committee supports assisting the States in this regard, and thus, to facilitate the processing of the applications on file.

THE COMMITTEE AMENDMENT

As introduced, H.R. 7269 dealt both with the issuance of confirmatory patents for the vested school lands and also with authorization of the Secretary of Agriculture to sell or exchange certain lands under certain conditions. However, after reporting another bill (H.R. 6257) dealing with such sales and exchanges, the Committee adopted an amendment (earlier approved by the Subcommittee on Public Lands) which struck all portions of the bill except those dealing with the issuance of the confirmatory patents.

SECTION-BY-SECTION ANALYSIS

As amended, the bill is in a single section which authorizes the issuance of confirmatory patents as discussed above in this Report.

COST AND BUDGET ACT COMPLIANCE

H.R. 7260, as amended, authorizes no appropriations and should have no discernible impact on the Federal budget. The analysis of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 24, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, 1342 Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7260, a bill to authorize the conveyance of certain federal lands and the issuance of certain patents, and for other purposes, as ordered reported by the House Committee on Interior and Insular Affairs, September 23, 1980.

This bill, as amended, authorizes the Secretary of the Interior to issue confirmatory patents to the states for school lands previously granted. Based on information from the Bureau of Land Management, it is expected that no significant additional cost to the government would be incurred as a result of enactment of this legislation.

Sincerely,

ROBERT D. REISCHAUER
(For Alice M. Rivlin, Director).

INFLATIONARY IMPACT

Pursuant to Rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee states that it believes that the enactment of H.R. 7260, as amended, will have no inflationary impact on the national economy.

LEGISLATIVE HISTORY

The Subcommittee on Public Lands held a hearing on H.R. 7260 on May 19, 1980, and on September 19, 1980, ordered it reported to the Full Committee with an amendment.

OVERSIGHT STATEMENT

The Committee on Interior and Insular Affairs will have continuing oversight responsibility concerning the implementation of the legislation following its enactment.

COMMITTEE RECOMMENDATION

On September 23, 1980, the Committee on Interior and Insular Affairs, by voice vote, ordered H.R. 7260 favorably reported, and the Committee recommends its enactment by the House.

EXECUTIVE CORRESPONDENCE

The Department of the Interior transmitted, by letter, a draft bill on January 30, 1980.

The Department of the Interior reported by letter on H.R. 7260 on May 19, 1980. Copies of the letters are attached.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., January 30, 1980.

Hon. THOMAS P. O'NEILL,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Transmitted herewith is a draft bill to authorize the Secretary of the Interior to issue patents to the numbered school sections in place, granted to the States by the Act approved February 22, 1889, by the Act approved January 25, 1927 (44 Stat. 1026), and by any other Act of Congress.

We recommend that the proposed bill be referred to the appropriate committee and that it be enacted.

The enclosed bill would reenact the Act of June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871a), which directed the Secretary of the Interior to issue patents to States for school lands which had been conveyed to the States. Patents issued under the 1934 Act were to show the date when title vested and the extent to which the lands were subject to prior conditions or rights. Such patents did not actually grant title, since title had already vested in the State; they merely provided evidence of title. Many States have found that under their laws it is necessary for them to have patents describing the date on which title to land vested in them.

Section 705(a) of the Federal Land Policy and Management Act of 1976 (FLPMA) repealed a number of laws relating to the administration of public lands, including the Act of June 21, 1934. Although section 208 of FLPMA authorizes the Secretary of the Interior to

issue patents or other documents of conveyance, we believe that that Act does not authorize the Secretary to issue "confirmatory" patents such as those provided for in the repealed 1934 Act. However, we believe that the original intent of Congress in enacting FLPMA was to retain the Secretary's authority, which was granted in the 1934 Act, to issue "confirmatory" patents.

Section 208 of FLPMA is derived from section 211 of S. 507, 94th Congress, 1st Session, which provided: "Consistent with his authority to dispose of national resource lands, the Secretary is authorized to issue deeds, patents, and other indicia of title. . . ." We believe that this provision, if enacted, would have retained the authority to issue confirmatory patents which had been granted in the 1934 Act. Section 208 of FLPMA, however, does not allow such a construction, since it authorizes the Secretary to issue patents only "after any disposal authorized by this Act." The numbered school section grants to States are not "disposals authorized by FLPMA." Section 208 further directs the Secretary to insert in any such patent or other document of conveyance which he issues "such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest. . . ." We do not believe that it was intended that the Secretary insert in confirmatory patents the types of terms and conditions required by section 208 of FLPMA.

Although the Act of June 21, 1934, was repealed without enactment of comparable authority, another statute, the Act of January 15, 1927, as amended (43 U.S.C. 870(d)(4)), still requires that the Secretary "shall, upon application by a State, issue patents to the State" for mineral lands in place granted to a State for support of schools. It is our view that it would be proper for any such patent for mineral lands to include the information concerning title and prior conditions and rights required by the repealed 1934 Act. However, where lands in place granted to the State are found to be nonmineral in character, there is now no authority to issue, as evidence of title, a document in the form of a "patent."

While there is nothing to prevent issuance of a document to a State, in the form of a letter or otherwise, which is not designated a "patent," but which provides the information necessary to determine the date on which title vested in the State, this apparently is not sufficient for the States' needs. The Bureau of Land Management has on file numerous applications under the 1934 Act and has received several indications that patents, rather than letters or other documents, are needed. Further, the Western States Land Commissioners Association has adopted resolutions in support of reenactment of the 1934 Act. Although the Department does not necessarily agree that issuance of a patent is the only appropriate evidence of the previous vesting of title in the State in these cases, we would like to assist the States in this regard, and to facilitate the processing of the applications on file.

For these reasons, we recommend speedy enactment of the enclosed draft bill, the text of which is identical to that of the 1934 Act. Until its enactment, the Bureau of Land Management will use existing authority to meet State needs to the greatest extent possible.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely,

GUY R. MARTIN.
Assistant Secretary.

Enclosure.

A BILL To authorize the Secretary of the Interior to issue patents to the numbered school sections in place, granted to the States by the Act approved February 22, 1889, by the Act approved January 25, 1927 (44 Stat. 1026), and by any other Act of Congress

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall upon the application by a State cause patents to be issued to the numbered school sections in place, granted for the support of common schools by the Act approved February 22, 1889, by the Act approved January 25, 1927 (44 Stat. 1026), and by any other Act of Congress, that have been surveyed, or may hereafter be surveyed, and to which title has vested or may hereafter vest in the grantee States, and which have not been reconveyed to the United States or exchanged with the United States for other lands. Such patents shall show the date when title vested in the State and the extent to which the lands are subject to prior conditions, limitations, easements, or rights, if any. In all inquiries as to the character of the land for which patent is sought the fact shall be determined as of the date when the State's title attached.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 19, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives.
Washington, D.C.

DEAR MR. CHAIRMAN: This Department submits, for your consideration, its comments on H.R. 7260, a bill, "To authorize the conveyance of certain Federal lands and the issuance of certain patents, and for other purposes."

H.R. 7260 combines two legislative proposals transmitted to the Congress, one by the Department of Agriculture, the other by this Department. While we note that there are some differences in sections 1 and 2 of H.R. 7260 from the proposal transmitted by the Department of Agriculture, we defer to the Department of Agriculture on these sections. We support the enactment of section 3 of H.R. 7260, which is nearly identical to this Department's proposal.

Section 3 of H.R. 7260 would direct the Secretary of the Interior to issue patents to the States for numbered school sections previously granted to the States by several acts of Congress. It would basically reenact the Act of June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871a), which directed the Secretary of the Interior to issue patents to States for school lands which had been conveyed to the States. Patents issued under the 1934 Act were to show the date when title vested

and the extent to which the lands were subject to prior conditions or rights. Those patents did not actually grant title, since title had already vested in the State; they merely provided evidence of title. Many States have found however, that under their laws it is necessary for them to have patents describing the date on which their title to the land became vested.

Section 705(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) (FLPMA) repealed a number of laws relating to the administration of public lands, including the Act of June 21, 1934. Although section 208 of FLPMA authorizes the Secretary of the Interior to issue patents or other documents of conveyance, we believe that that Act does not authorize the Secretary to issue "confirmatory" patents such as those provided for in the repealed 1934 Act.

Section 208 of FLPMA is derived from section 211 of S. 507, 94th Congress, 1st Session, which provided: "Consistent with his authority to dispose of national resource lands, the Secretary is authorized to issue deeds, patents, and other indicia of title . . . ." We believe that this provision, if enacted, would have retained the authority to issue confirmatory patents which had been granted in the 1934 Act. Section 208 of FLPMA, however, does not allow such a construction, since it authorizes the Secretary to issue patents only "after any disposal authorized by this Act." The numbered school section grants to States are not "disposals authorized by FLPMA." Section 208 further directs the Secretary to insert in any such patent or other document of conveyance which he issues "such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest . . . ." We do not believe that it was intended that the Secretary insert in confirmatory patents the types of terms and conditions required by section 208 of FLPMA.

Although the Act of June 21, 1934, was repealed without enactment of comparable authority, another statute, the Act of January 25, 1927, as amended (43 U.S.C. 870(d)(4)), still required that the Secretary "shall, upon application by a State, issue patents to the State" for mineral lands in place granted to a State for support of schools. It is our view that it would be proper for any such patent for mineral lands to include the information concerning title and prior conditions and rights required by the repealed 1934 Act. However, where lands in place granted to the State are found to be nonmineral in character, there is now no authority to issue, as evidence of title, a document in the form of a "patent."

While there is nothing to prevent issuance of a document to a State, in the form of a letter or otherwise, which is not designated a "patent," but which provides the information necessary to determine the date on which title vested in the State, this apparently is not sufficient for the States' needs. The Bureau of Land Management has on file numerous applications under the 1934 Act and has received several indications that patents, rather than letters or other documents, are needed. Further, the Western States Land Commissioners Association has adopted resolutions in support of reenactment of the 1934 Act. Although the Department does not necessarily agree that issuance of a patent is the only appropriate evidence of the previous vesting of title in the State in these cases, we would like to assist the States in this regard, and to facilitate the processing of the applications on file.

For these reasons, we recommend the speedy enactment of section 3 of H.R. 7260.

H.R. 7260 is nearly identical to the legislative proposal submitted by this Department. Two of the differences are basically stylistic. The third difference—the addition of a provision stating that no present State entitlement would either be increased or decreased by this legislation—simply states the intent behind our proposal, and we support its inclusion.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GUY R. MARTIN,
Assistant Secretary.

○